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COMMISSION ON HUMAN RIGHTS

SUB-COMMISSION ON PREVENTION OF DISCRIMINATION AND
PROTECTION OF MINORITIES

Forty-fifth session

SUMMARY RECORD OF THE 23rd MEETING

Held at the Palais des Nations, Geneva,
on Wednesday, 18 August 1993, at 3 p.m.

Chairman: Mr. AL-KHASAWNEH

later: Mr. YIMER

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The meeting was called to order 3.10 p.m.

THE ADMINISTRATION OF JUSTICE AND THE HUMAN RIGHTS OF DETAINEES

(a) QUESTION OF THE HUMAN RIGHTS OF PERSONS SUBJECTED TO ANY FORM OF DETENTION OR IMPRISONMENT

(b) QUESTION OF HUMAN RIGHTS AND STATES OF EMERGENCY

(c) INDIVIDUALIZATION OF PROSECUTION AND PENALTIES, AND REPERCUSSIONS OF VIOLATIONS OF HUMAN RIGHTS ON FAMILIES

(d) THE RIGHT TO A FAIR TRIAL

(agenda item 10) (continued) (E/CN.4/Sub.2/1993/19-21, 23, 24 and Add.1 and 2; E/CN.4/Sub.2/1993/NGO/2, 9, 14 and 15)

INDEPENDENCE AND IMPARTIALITY OF THE JUDICIARY, JURORS AND ASSESSORS AND THE INDEPENDENCE OF LAWYERS (agenda item 11) (continued) (E/CN.4/Sub.2/1993/25; E/CN.4/Sub.2/1993/NGO/15)

REVIEW OF FURTHER DEVELOPMENTS IN FIELDS WITH WHICH THE SUB-COMMISSION HAS BEEN CONCERNED (agenda item 4) (continued) (E/CN.4/Sub.2/1993/2 to 4, 6-9, 10 and Corr.1 and 2; E/CN.4/Sub.2/1993/NGO/1; A/CONF.157/23)

1. Mr. BENHIMA (Observer for Morocco), speaking in exercise of the right of reply, said that at a previous meeting Mr. Joinet had underscored the need to preserve objectivity and order during the debates. It had to be admitted that certain NGOs failed to do so and engaged in denunciations of alleged large-scale human rights violations on the basis of unverified or even rigged information. For example, Amnesty International took upon itself to assert that enforced disappearances had been commonplace in Morocco since the 1960s. The same NGO also asserted that hundreds of persons had disappeared without advancing any proof or giving the names of the persons concerned. Such conduct verged on provocation. As for individuals released in 1991, whom Amnesty International had counted as disappeared, far from having disappeared, they had been held under house arrest for having committed serious offences that constituted breaches of Morocco's territorial integrity. Moreover, the NGO could rest assured about the fate of the young Moroccan general whose death it had announced: he was still alive and well. He said that in Note No. 530, dated 11 May 1993, transmitted to the Working Group on Enforced or Involuntary Disappearances, the Moroccan authorities had reported that they were continuing their investigations into alleged disappearances. Unfortunately, the investigations were hampered by the inadequate information provided, which did not make it possible to identify the persons concerned. NGOs certainly had an active role to play in defending human rights. However, their work should remain objective, thorough and responsible and should not degenerate into provocation and invective.

2. Ms. PARKER (International Educational Development) said that the report by Mrs. Ksentini on human rights and the environment (E/CN.4/Sub.2/1993/7) demonstrated the need to take the environment into account whenever human rights were considered. The Special Rapporteur made a number of preliminary

recommendations in her report many of which stressed the importance of incorporating environmental human rights concerns into existing mechanisms and procedures. For example, the right to development could not be realized unless development was ecologically sustainable. Similarly, the right to life could not be protected without reference to environmental protection. IED also endorsed the Special Rapporteur's suggestion that the Commission on Human Rights should be requested to consider the possibility of establishing a mechanism for monitoring situations, for example by appointing a thematic rapporteur. Her organization was gratified to note that the Special Rapporteur on compensation had also addressed the question of the environment in his final report (E/CN.4/Sub.2/1993/8). He had moreover emphasized collective rights which had also been touched upon by Mrs. Rigoberta Menchu in her statement to the Sub-Commission on 13 August.

3. IED also hoped that the Sub-Commission and the Commission would follow the recommendations of the Special Rapporteur on discrimination against HIV-infected people or people with AIDS (E/CN.4/Sub.2/1993/9). In that regard, IED emphasized that there was a growing body of evidence calling into question the hypothesis that HIV was linked to AIDS. The results, published some months previously, of the long-term "Concord Trial" medical experiment, showed that early administration of AZT neither prolonged the life of victims nor brought them any relief. It had on the contrary shown that there were more deaths among sick people treated with AZT than among those who had not taken it. The experiment had also found nothing to substantiate the hypothesis that HIV was connected to AIDS or caused AIDS. It was important to stress that the United States Public Health Services was unable to affirm, on the basis of scientific evidence, that HIV caused AIDS and that authoritative figures - she cited in particular Professor Luc Montagnier - had expressed doubts. However, the conviction that HIV was connected to AIDS had extremely serious consequences. Tens of thousands of HIV-infected persons believed themselves to be condemned; however, it was when they were given AZT, or another anti-viral medicine that they actually ran the risk of dying as a consequence of the treatment itself. Clearly, the findings of that experiment raised major issues in terms of bioethics and human rights. Fruitless tests were commonplace in medical research, although there was a gap between the hesitant probing of research and knowingly giving credence to theories without any genuine substance and with potentially mortal consequences. IED and Project Aids International were aware that the Sub-Commission was not the proper place to discuss scientific matters. However, it was not inappropriate to invoke before it the topic of violations of bioethics that could lead to the death of many individuals, not to mention the waste of thousands of dollars devoted to research. IED and Project Aids International therefore hoped that the Sub-Commission would request WHO and other concerned organizations to transmit relevant information to the Secretary-General, so that it could be examined as part of the review of further developments in fields with which the Sub-Commission was concerned.

4. Mr. TEITELBAUM (American Association of Jurists) welcomed the attempt by the Sub-Commission to deal systematically with the problem of impunity. In particular, the American Association of Jurists noted with satisfaction that the rapporteurs stressed the importance of preserving and recovering archives and files. It was common knowledge that in most countries where serious and

systematic violations of human rights occurred, it was claimed that the archives had disappeared. In actual fact, it was more often a refusal to divulge them than failure to conserve them.

5. The American Association of Jurists deplored the absence of a precise definition of the very concept of impunity. The lack of a definition lay at the root of a number of available misunderstandings. AAJ believed that the operation of the mechanisms that ensured impunity was the sole responsibility of States or of the authorities with a mandate to govern a territory in accordance with the Optional Protocols to the Geneva Conventions. Other groups could be guilty of serious crimes, although they were neither subjects of international law nor could they avail themselves of State machinery which enabled them to enjoy impunity. When violations were committed by persons other than State agents, they could be tried in accordance with the laws of the country concerned, or brought before international courts in the case of crimes against humanity.

6. The lack of a definition of the concept of impunity was probably the reason why the authors had advanced for the concept of relative impunity. Impunity was the absence or even the inadequacy of justice, although it was impossible to distinguish between two types of impunity, one of which was absolute and the other relative, or even perhaps "acceptable" in certain cases. It was particularly dangerous to introduce such a concept which would open the way to legitimizing impunity, into a United Nations study. In a few years, some Governments might justify themselves and claim that certain acts came within the sphere of relative impunity. The American Association of Jurists categorically rejected that concept.

7. Moreover, AAJ also expressed its disagreement with the manner in which the authors addressed the question of enforced disappearances. They appeared in fact to assert that only victims' organizations and NGOs wished enforced disappearances to be treated as crimes against humanity, as if that desire was fuelled solely by emotional considerations. AAJ pointed out that OAS and the Council of Europe had declared enforced disappearances to be crimes against humanity. It was necessary to examine the classification of enforced disappearances from the angle of their motives and not from that of their consequences. As far as State responsibility in that sphere was concerned, AAJ welcomed the proposal by Mr. Chernichenko to consider certain violations, including enforced disappearances, as international crimes. Moreover, although the concept of due obedience might constitute a mitigating circumstance, it was the responsibility of judges to decide, on a case-by-case basis.

8. In addition, since 1990 the American Association of Jurists had proposed that the policies and practices of States, institutions or individuals which prevented the realization of the right to development and of economic, social and cultural rights should be declared international crimes. The Association included among such practices and policies the abuse of economic power to obtain, through coercion, disproportionate concessions or advantages. In that connection, the report by Mr. Guissé and Mr. Joinet (E/CN.4/Sub.2/1993/6) seemingly treated corruption as a characteristic of dictatorial regimes, or of developing countries. AAJ believed that corruption was a universal scourge from which the developed and democratic countries were not exempt. In

addition, corruption was but one aspect of a range of violations of economic and social rights whose roots lay in the decision-making organs of transnational corporations and banks, as well as of international financial institutions. In most cases, such violations were committed with the consent and support of the Governments of the major Powers and with the complicity of the élites in the developing countries. AAJ did not share the scepticism shown in paragraph 12 of the report by Mr. Guissé and Mr. Joinet as to the possibility of combating impunity in respect of economic and social rights by means of criminal law. Certainly, the international human rights instruments which established economic, social and cultural rights had proved inadequate to prevent them from being violated. For that reason it was necessary to embark upon a new phase to protect them and to punish, under criminal law, those States, public or private institutions and individuals guilty of violations. States could only be compelled to provide compensation. In addition to being obliged to provide compensation, institutions and individuals could be given criminal sentences, in the form of fines for institutions and prison sentences for the representative of institutions with decision-making power and persons who were found individually responsible. As for the nature of the offences, there was no doubt that they were international crimes as they constituted a large-scale, gross and systematic violation of the life, integrity and dignity of the human person. In order to move in that direction, it would be extremely valuable to consult the comments of the Committee on Economic, Social and Cultural Rights, the work of the International Law Commission on State responsibility as well as the work of the Ministerial Committee of the Council of Europe on the contribution of criminal legislation to environmental protection.

9. The American Association of Jurists suggested that Mr. Chernichenko should include the topic in his work and requested the Sub-Commission to adopt a resolution proposing the organization, as part of the preparatory activities for the World Summit for Social Development, of a seminar, which could be attended by specialists in international criminal law and economists, on the violation of economic, social and cultural rights and of the right to development, as an international crime.

10. Mr. KOTHARI (Habitat International Coalition) was gratified that the report on compensation (E/CN.4/Sub.2/1993/8) and that on human rights and the environment (E/CN.4/Sub.2/1993/7) addressed the question of forced evictions which for many reasons deserved greater attention from the United Nations system. The fact that compensation, when it was paid, was inadequate and that rehousing or resettlement policies were either not implemented or lacked any consideration for the rights of those affected was particularly disturbing. Moreover, on the basis of misguided ideas about development and progress, Governments continued to implement large development projects that had dubious benefits, were destructive of the environment and caused the forced eviction of millions of people across the world. Even though the issue was compensation, it was important to stress that most forced evictions were preventable, and, as the Committee on Economic, Social and Cultural Rights had pointed out in its general comment No. 4 (E/1992/23, annex III) "instances of forced eviction are prima facie incompatible with the requirements of the Covenant and can only be justified in the most exceptional circumstances, and in accordance with the relevant principles of international law".

11. Habitat International Coalition had received information on the following cases of forced eviction: in Lesotho, a water diversion scheme, financed by the World Bank and the European Community had caused the eviction of over 40,000 people and the destruction of 11,000 hectares of arable land. In India, the authorities had proved incapable of carrying out the resettlement plans for the Sardar Sarovar project in the Narmada valley. Under international pressure, the Indian authorities had undertaken to review the project. However, if it were implemented the project would cause the displacement of up to 300,000 people. In Sri Lanka, the construction of an expressway, organized in the utmost secrecy, had caused the forced eviction of 25,000 people. In Israel, the policy followed by the authorities of demolishing Palestinian homes within the occupied territories was well known. Since 6 July 1992, the Israeli defence forces employed anti-tank missiles to destroy Palestinian homes in the Gaza Strip. In Malaysia, 3,000 people had been expelled to permit the construction of the Batang Ai dam. As the compensation paid had been extremely low, they had been reduced to poverty. In Tibet, numerous buildings that belonged to the Tibetan cultural heritage were to be destroyed and replaced by concrete buildings. Evictions and demolitions had been rampant in Lhassa for several years and would continue until Lhassa was no longer a Tibetan city, but, as the authorities wished, a Chinese city. In the Philippines, over 3,300 families from 16 communities had been forcibly evicted in and around Metro Manila. Over 100,000 people were violently evicted every year in Manila. In Brazil, Rio de Janeiro had become the most segregated city in Latin America with the poor being systematically evicted from coastal areas. Not far from the site of the UNCED Conference, there were plans to expel over 25,000 people, on the pretext of "environmental conservation". In China, the construction of the Three Gorges dam on the Yangtse River and of another dam on the Yellow River would result in the eviction of over 1 million persons. In Bhutan, documents originating from the Royal Government revealed that the demolition of the homes of southern Bhutanese continued. In France, 1,500 homeless persons of African origin had been forcibly evicted from the Vincennes encampment where they had been living for six months. In Indonesia, the homes of 10,000 people had been demolished to create a green space for the Summit of the Non-Aligned Movement. In Hawaii, evictions of ethnic Hawaiians were routine. In the Dominican Republic, despite criticism by the international community, the Government had announced plans forcibly to evict 20,000 families from their homes in Santo Domingo. In the United States, numerous inhabitants of Atlanta had already been expelled from their homes in preparation for the 1996 summer Olympic Games, with thousands more set to be evicted unless pressure was brought to bear on the authorities. In Turkish-occupied Kurdistan, the inhabitants of over 50 villages had been expelled from their homes in the course of military operations by the Turkish Government.

12. Habitat International Coalition urgently requested the Special Rapporteur on human rights and the environment to study the many aspects of forced evictions with a bearing on the destruction of nature on which the populations depended for their livelihood and to expose the record of Governments and international aid agencies that tolerated the destruction of communities in the name of protecting the environment. In addition, Habitat International Coalition requested the Sub-Commission explicitly to recommend to the Commission on Human Rights the appointment of a special rapporteur on forced evictions at its 1994 session.

13. Mr. VARELA QUIROS, at the invitation of the Chairman, introduced his final report on discrimination against HIV-infected people or people with AIDS (E/CN.4/Sub.2/1993/9). He had not been able to modify the substance of his previous report (E/CN.4/Sub.2/1992/10), on the one hand because the Sub-Commission had not given him a mandate to send a further questionnaire to Governments, and secondly because, for lack of funds, the Secretariat, which had been very busy with preparations for the Vienna Conference, had been unable to provide him with a consultant who would have helped him to analyse the information available. In those circumstances, he had decided, in agreement with the Secretariat, to submit his recommendations and final conclusions there and then.

14. The AIDS pandemic was progressing at an alarming rate, especially in the developing countries. At the time, 14 million people were HIV-infected. The developed countries had succeeded in slowing down, if not stopping the advance of AIDS. In contrast, the disease was progressing rapidly in the third world on account of poverty and the absence of preventive measures. The pandemic increasingly affected women and children. Child prostitution had increased alarmingly. In most societies, women, who were still exposed to blind, essentially sexual violence, were threatened by the disease on account of the dangerous behaviour of their husbands and companions who, without taking the necessary precautions, engaged in promiscuous behaviour that turned them into potential transmitters of the disease. There was a pressing need for preventive measures and information campaigns to check the transmission of AIDS. He concluded by thanking the Centre for Human Rights and Mr. Cisse for the help they had given him.

15. Mr. MERSON (World Health Organization) first of all stated that the views expressed shortly before by an NGO concerning HIV and AIDS were shared neither by WHO nor by the majority of scientists. At the beginning of 1993 there had been over 2.5 million AIDS cases, i.e. 20 per cent more than at the beginning of 1992. WHO estimated that by 2000 there would be at least three times more new cases of AIDS than in 1992. Furthermore, WHO estimated that more than 13 million adolescents and adults, including 8 million in sub-Saharan Africa had been infected by HIV since the start of the pandemic. It was currently in Latin America and in Southern and South-East Asia that the disease was progressing most rapidly.

16. Approximately three quarters of cumulative HIV infections had been acquired through unprotected sexual intercourse. Heterosexual transmission was still on the rise. What had changed, was that at that time approximately half the newly infected adults were women. Mother-to-child transmission was also growing. Approximately 1 million children had been thus infected, half of them through breast-feeding. Young people were particularly affected. Since the start of the pandemic, at least 6 million young people aged under 25 had been infected by HIV through unprotected intercourse or needle-sharing. The situation was particularly disturbing in the countries of the third world where 800 million young people lived and where the pandemic was expanding the fastest. It was possible to say that it was above all through young people that the pandemic was developing.

17. As the Special Rapporteur had underscored in his report, it was necessary to empower the most vulnerable sectors of the population, particularly women

and children, to protect themselves. The means of prevention were known. Accordingly, Governments should inform the population, especially schoolchildren, as the age of the first sexual experience was becoming lower all the time.

18. In 1992 the World Health Assembly had firmly condemned discrimination against HIV-infected persons or persons with AIDS. WHO too was resolutely opposed to any form of discrimination against such persons and would neither sponsor nor provide financial support to any conference or international organizations on AIDS held in countries where their freedom of movement was limited. WHO was also concerned, within the framework of the Global Programme on AIDS, by the possible relationship between HIV/AIDS and human rights, particularly as regards conditions in prisons and AIDS screening, and discrimination in the workplace. Within the framework of the Global Programme, WHO also encouraged States to remove legal and other barriers preventing the population from acquiring frank information on the risks of sexual transmission of the disease.

19. The reports prepared by the Special Rapporteur and the final conclusions he had just submitted were a valuable source of information on the discriminatory practices against HIV-infected people or people with AIDS. However, the Sub-Commission should keep the issue on its agenda and thus contribute to seeking means of combating AIDS. In that regard, he mentioned that in May 1993 the World Health Assembly had requested the Director General of WHO to consider, with full regard for the view of the Management Development Committee, the economic and institutional benefits - for the member States and the United Nations system - of a joint and co-sponsored United Nations programme on HIV and AIDS. The Sub-Commission might wish to request the Secretary-General to keep it informed of the evolution of the programme, which would probably include aspects relating to human rights and discrimination.

20. Mr. JOINET, introducing his report on the independence of the judiciary and the protection of practising lawyers (E/CN.4/Sub.2/1993/25), said that the inspiration for the report came from the conclusion reached by all the special rapporteurs, that there was a close link between the degree of effectiveness of the guarantees to which the judiciary was entitled and the seriousness of the violations recorded. That was the reason for the importance given in the report to the progress made, particularly in the normative and regulatory sphere. That was why the first chapter of part one of the report was entitled "Positive measures and practices".

21. The chapter highlighted the efforts made by Governments to strengthen the independence of the judiciary. The Special Rapporteur believed that it was just as important to highlight the progress made as to focus solely on infringements of the independence of the judiciary. That approach strengthened the cooperativeness of Governments. In some countries, there was already an established link between the progress of positive measures and practices and the programme of advisory services and technical assistance concerning guarantees for the independence, impartiality and protection of the judiciary. The second chapter of part one of the report was devoted to negative measures and practices. The latter might be in the form of de facto violations involving violence, physical threats and harassment or of actions

undermining the court's need for objective and impartial information or violations in the operation of the law, possibly linked to the introduction of states of emergency or the establishment of courts of special jurisdiction or encroachments on professional or jurisdictional status or even on fundamental freedoms, in particular freedom of association. In that regard, he pointed out that ILO Convention No. 111 concerning discrimination in respect of employment and occupation applied to judges and other judicial professions, as did Convention No. 87 concerning freedom of association. Judges, lawyers and other judicial professions thus had the right to set up organizations to protect their rights and preserve their independence.

22. The second part of the report was entitled "Reinforcement of cooperation between United Nations programmes to guarantee the independence and impartiality of the judiciary and the establishment of a monitoring mechanism". The need to improve cooperation, especially between Geneva and Vienna was currently receiving consideration. He drew attention to paragraphs 1 to 8 of the second part, and more particularly to paragraphs 7 and 8 which reiterated the forceful positions adopted by the World Conference on that issue.

23. Turning to the question of advisory services, he said that progress had been achieved in that field during the year, especially in terms of teaching methods. However, he wondered whether the fellowships were still suited to current circumstances, and whether it would not be better to make an effort to provide regional training. However, considerable progress still had to be made. The top priority given by the Assistant Secretary-General for Human Rights, Mr. Fall, to advisory services boded well for the future in that respect. Perhaps the Sub-Commission might wish to call on the wealthier States to increase their financial contributions to the Voluntary Fund, which now had a Board of Trustees, permitting Governments to be involved more actively in its projects.

24. In paragraphs 42 to 45 of his report, the Special Rapporteur examined the evolution of the general situation in Central and Eastern Europe. The law, which had in the past been considered a means of defence for the State was currently seen as a means of reconciling divergent interests. A system was emerging which was less and less inquisitorial and more and more adversarial. Judges were now required to ensure equal terms among the parties to proceedings. Lastly, lawyers were called upon to play a much more active role than in the past. The combination of the last two factors should increase the independence of the judiciary. However, serious difficulties remained. Judges had seen their real income plummet and many of them had lost social status on account of their participation in the institutions of the previous regime.

25. The increase in crime, and in particular of crime linked to the Mafia, throughout the region, was extremely disturbing, particularly as the members of the legal profession and the police lacked the technical and material resources to combat it successfully. That situation was causing some disillusionment among judges, assessors and lawyers, prompting many of them to turn to more lucrative activities, thereby further worsening the situation of the judicial system and jeopardizing its progress towards greater impartiality and independence. Lastly, he touched upon the question of protection of the

physical integrity of judges and lawyers. In that connection, he said that there had been a disturbing rise in fanatical violence and Mafia-linked crime, compelling States to adopt exceptional measures to protect judges, lawyers or even detainees: anonymity for judges, witnesses, masked judges, etc. The question that arose, and to which he had no ready reply, was how democracy could be defended against terrorism, the Mafia and corruption without adopting emergency measures which jeopardized democracy.

26. Mrs. WARZAZI summarized her work on harmful traditional practices, and said that she had received a letter from the Centre for Human Rights, requesting information on the status of the programme of action established to eliminate such practices. In 1991, the Sub-Commission had decided to extend her mandate for two years in order to permit her to complete her report on the question and to incorporate the conclusions of a seminar due to be held in Asia. However, until the previous session of the Sub-Commission, no Government had informed the Centre for Human Rights that it was willing for the seminar to be held on its territory. She had received no further news from the Centre during the current year, which she found surprising, although she was not unaware that the previous two years had been extremely trying for the Centre, as it had had to prepare the Vienna Conference on Human Rights. However, she was uncertain about the fate of the planned seminar, the state of the budget and the assistant who was due to be seconded to her.

27. Despite those difficulties, she had nevertheless noted some progress since 1991. In May 1993, the Inter-African Committee on Traditional Practices affecting the Health of Women and Children had been granted consultative status with the Economic and Social Council. In addition, public opinion was increasingly interested in the problem, which had given rise to numerous articles in the press. Television had also turned its attention to the topic: the United States television channel ABC had reportedly made a film on the topic although it hesitated to broadcast it for fear of shocking viewers. She spoke in an ironic manner about the daily violence on television screens in the United States and asked the ABC channel to face up to its responsibilities and to broadcast the programme. She also mentioned a series of articles published in the New York Times beginning on 16 February 1993 and addressing the causes of suffering for women and small girls in numerous countries in Africa, Asia and Latin America, under suggestive headings such as "poor, oppressed, women and sentenced to live".

28. She also referred to a report published at the beginning of the year by the Department for the Development of Women and Children of India, which recognized that in a culture which idolized sons and dreaded the birth of a daughter, the birth of a girl was dangerously equated with the birth of a non-human. In those circumstances, many mothers apparently preferred to sentence their daughters to death rather than to a life as a third world woman, the victim of lifelong discrimination. Mr. Muntarbhorn, Special Rapporteur on the sale of children, child prostitution and child pornography had emphasized in his report to the Commission on Human Rights at its forty-second session (E/CN.4/1993/67) the sad fate of young girls in southern Asia: early marriage to old men, the dowry, religious superstitions that compelled families to offer their daughters, who became religious prostitutes ...

29. Regarding genital mutilation, she was pleased that the World Health Organization had at last - in May 1993 - launched an appeal against that practice which was prejudicial to health and to the development and rights of all members of society. According to a WHO press release, approximately 80 million small girls and women were the victims of sexual mutilation, in almost 30 countries, especially in Africa. The practice was also current among immigrant populations in Australia, Europe and North America. Some Governments had indeed adopted measures to combat genital mutilation, although she had misgivings as to their timeliness. She gave the example of a Gambian woman sentenced to five years' imprisonment in France for having had her two daughters excised. The year before, a Malian woman had been sentenced to eight years' imprisonment for having herself mutilated her three daughters, who had all died as a result of a haemorrhage. None the less - and she quoted a specialist on Africa, Mr. Attilio Gaudio, who had carried out a study into the question - one might well wonder whether European countries with large African migrant populations were right to assume that it was possible to change mental attitudes by resorting to the courts and punishment. There was reason to think that any change in outlook could only come from the Africans themselves, and more particularly from African women, since - quite paradoxically - it was they who most vigorously defended such practices. She quoted an article from the International Herald Tribune reporting the dilemma of a Somali family living in Atlanta: the mother insisted that her daughters should undergo excision of the clitoris even though their father was opposed to it.

30. The Sub-Commission would have to take a decision on that complex issue when it considered the final report on the subject. In the meantime, she invited its members to reflect upon that extremely intractable problem. In any event, the Vienna Conference had underscored the importance of eliminating any conflicts that might arise between the rights of women and the harmful consequences of certain traditional or customary practises. Moreover, she would have liked the document adopted to have been more forceful and regretted that delegates had sought mainly to achieve a consensus. Lastly, she said that education for girls was vital, since they accounted for two thirds of the 130 million children throughout the world who did not attend school.

31. Mr. BOUTKEVITCH said that many of the reports before the Sub-Commission at its current session were highly interesting. He cited in particular Mrs. Ksentini's report on human rights and the environment (E/CN.4/Sub.2/1993/7) and mentioned in that connection that in his country law students were required to submit a paper at the end of their studies and that 5 per cent of graduates had chosen a topic connected with that relationship. He said that paragraph 132 of the report, which introduced the concept of prevention and paragraph 135 which raised the issue of the implementation of the right to a healthy environment and of mechanisms for following up regional and international human rights instruments were particularly important. He fully supported the proposal contained in paragraph 139 regarding the establishment of a mechanism for monitoring situations.

32. He also congratulated Mr. Treat and Mr. Chernichenko on their valuable report on the right to a fair trial (E/CN.4/Sub.2/1993/24). Lastly, he referred at greater length to the working document presented by Mr. Chernichenko (E/CN.4/Sub.2/1993/10) in which the latter addressed the

definition of gross and large-scale violations of human rights as an international crime. He congratulated Mr. Chernichenko on his work, although he felt that a number of concepts deserved greater clarification. In particular, he drew attention to the various ways of classifying human rights violations: some were "gross", others "large-scale" and others "serious". However, in order to define the characteristics of an "international crime", absolute precision was necessary. As for the matter of the proposed declaration, he thought that it should remain open, although further research was required. Perhaps a special rapporteur could identify a number of legal principles and the exact meaning of certain terms, in a special study. Another issue that ought to be further explored was responsibility, as on some occasions it involved State responsibility, on others that of a Government or even of individuals. However, he was convinced of the importance of a declaration on that topic, which in his view justified more extensive research.

33. Mr. HELLER, referring to the report by Mr. Joinet and Mr. Guissé (E/CN.4/Sub.2/1993/6), said that he wished to comment on the question of impunity. First of all, he pointed out that the authors of the report had focused their study on civil and political rights, and had postponed economic, social and cultural rights to a later stage. He stressed the indivisibility and interdependence of both categories of rights and wondered about impunity in the case of economic crimes. With regard to classification, he thought that the authors could adopt a more systematic approach and consider not only specifically political situations, but others that had been in existence for some time. He referred in particular to drug trafficking and efforts to combat it, which led to serious human rights violations. He then referred to the possibility that impunity might occur less as a result of deliberate action than because of institutional weakness. Even when there were excellent bodies of law, it was sometimes extremely difficult to ensure the law was enforced and he emphasized the importance of strengthening the rule of law.

34. With regard to the question of amnesty, he believed that it was important to take into account the different situations of countries. Some countries were in a process of transition, a fact which had to be taken into account: for example, El Salvador, where the Government had set up the Commission on the Truth, or, in contrast, another Latin American country with a democratic Government where the main perpetrator of human rights violations was the Minister of Defence himself.

35. Lastly, regarding the proposed international criminal court, he wondered whether the speediest solution would not be to set up special ad hoc courts. It seemed rather difficult to envisage an international criminal court within the framework of a treaty, since in order to be effective, its establishment would require the agreement of the international community, which could not be taken for granted. On the other hand, ad hoc courts would in a manner of speaking make it possible to sound out the international community on the issue.

36. Mr. Yimer took the Chair.

37. Mr. GUISSE recognized that he and Mr. Joinet had restricted their study to civil and political rights, as they had explained: it was required by

their mandate. However, their report opened a window on to economic, social and cultural rights which would be given full consideration in the final report. He fully supported Mr. Heller's analysis that the weakness of the rule of law lay at the root of failure to respect human rights. For that reason he reasserted the need to strengthen the rule of law. He also underscored the difficulty posed by the question of ad hoc international courts, and pointed out that the report severely criticized emergency courts and noted that ad hoc international courts were disturbingly similar to them. He added that Mr. Joinet would certainly revert to the issue.

38. He was generally concerned about the structure of the agenda. He pointed out that the Commission on Human Rights had for its part considered, at its previous session, the final report by Mr. Joinet and Mr. TÜrk on the right to freedom of opinion and expression (E/CN.4/Sub.2/1992/9 and Add.1) under agenda item 10 which concerned the rights of all persons subjected to any form of detention or imprisonment, and that it had decided, in resolution 1993/45, to appoint a special rapporteur on the topic for a period of three years. In his view, in order to give greater scope to the consideration of that topic, it was desirable first of all for the Commission on Human Rights to consider it as a separate agenda item and secondly for the agenda of the Sub-Commission to consolidate under a single item entitled "The right to fundamental freedoms" various issues that would constitute the following sub-items: (a) freedom of movement, (b) freedom of expression and (c) freedom of opinion. That would highlight the importance of those freedoms so that they received due attention from the Sub-Commission and the Commission. He said that he would submit his proposal in writing to the Secretariat.

39. Mr. MERRILLS said that the working document prepared by Mrs. Palley under agenda item 19 was ready and had been distributed to the members of the Sub-Commission in order for them acquaint themselves with it. Regarding Mr. van Boven's report on the right to restitution of victims of human rights violations (E/CN.4/Sub.2/1993/8) he drew the Sub-Commission's attention to the question of declaratory judgements referred to in connection with the forms of reparation proposed by the Special Rapporteur (para. 137.11 of the report). It should be noted that occasionally a declaratory judgement was sufficient. Naturally, compensation or some other remedy would be needed, particularly in cases of gross human rights violations, although as situations in the human rights sphere were very variable, it was important to draw attention to the very positive role that a declaratory judgement on behalf of the victim could play. For that reason, he was gratified that Mr. van Boven had taken it into account.

40. Mrs. Ksentini's report (E/CN.4/Sub.2/1993/7) covered a vast field of study and he would confine himself to the potential contribution of the International Court of Justice in that sphere. Mrs. Ksentini referred to the Nauru v. Australia case which was currently before the Court, and which was of great interest to the Sub-Commission as it involved a broad range of issues, some of which were connected to human rights. A case had also been recently referred to ICJ by Hungary and the Slovak Republic concerning a dispute between them over the construction of a dam in their border area. That case raised important environmental issues which would also have an impact on human rights and it was clear that the parties might raise human rights issues if they wished. Lastly, he mentioned that on 19 July 1993, the Court had

decided, pursuant to Article 26, paragraph 1 of its Statute, to form a special seven-member chamber to deal with environmental cases, some of which could have repercussions for human rights, thereby clearly demonstrating the seriousness with which it addressed that issue. The Court's decisions in the two cases mentioned and those which the newly established chamber would adopt would expand ICJ's competence to matters covered by Mrs. Ksentini's report.

41. Mr. ALFONSO MARTINEZ, replying to Mrs. Chavez, who had mentioned him by name during her statement at the previous meeting concerning the situation of detainees in Cuba, said that the Government of Cuba did not restrict its cooperation with United Nations bodies solely to replying to requests for information made under the procedure established by Economic and Social Council resolution 1503 (XLVIII). It cooperated with all the human rights organs and mechanisms, as Mr. Joinet, who chaired the Working Group on Detention, could certainly testify. Mrs. Chavez had in particular referred to the Government of Cuba's lack of cooperation with the Special Rapporteur, while overlooking the fact that her own country, the United States of America, had prevented him from satisfactorily discharging his mandate as Special Rapporteur by failing to issue him in time with the entry visa for which he had applied. Finally, as Mrs. Chavez had expressed the hope that conditions of detention would improve in Cuban prisons, he expressed a similar wish that the situation in prisons in the United States would improve, as the serious deterioration in prison conditions had been reported by numerous non-governmental organizations.

42. Mr. JOINET, commenting on the working paper submitted by Mr. Chernichenko under agenda item 4 (E/CN.4/Sub.2/1993/10) said that he disagreed with the assertion in paragraph 28 that there were virtually no truly international treaties in the field of human rights. In actual fact, virtually all the States Members of the United Nations had ratified the Geneva Conventions which contained provisions relating to the protection of human rights during armed conflict, and in particular a common article 3 which was far broader in scope. The aim was thus to make effective use of those instruments, particularly since the concept of a serious crime, which had the same characteristics as a crime against humanity, was evoked in them. Mr. Chernichenko might perhaps develop the matter further in his next report. In contrast, he shared the idea put forward by Mr. Chernichenko in paragraph 47, that it was always preferable for a treaty to be preceded by a declaration as the principles and norms thus proclaimed stood a better chance of receiving universal recognition and it was easier to reach a consensus on a declaration as its clauses were not legally binding. Furthermore, the declaration could be used for purposes of interpretation by States that were not parties to a particular convention. However, he was not sure of the need to make international crimes as specific as Mr. Chernichenko proposed, since there would be a risk of confusion as to which acts qualified as crimes against humanity - always in the past considered to be international crimes - and which acts came within the specific category of international crimes in the sense given to it in the report. Clarifications of that point would therefore be helpful.

43. He concluded by saying, in connection with the comments by Mr. Alfonso Martinez, that the Working Group on Detention, of which he was the Chairman, had been informed of 71 cases involving Cuba and that the Government of Cuba had provided detailed replies to the requests for information on each

case. Clearly, the Government of Cuba had fully cooperated with the Working Group and consequently with the United Nations.

44. Mr. Al-Khasawneh resumed the Chair.

45. Mr. SEZGIN (Observer for Turkey) speaking in exercise of the right of reply, informed the NGO which had raised the issue under agenda item 4, that those responsible for the tragic events at Sivas, in Turkey, six weeks previously, during which several people had died in tragic circumstances, had been arrested and were currently on trial and that they faced the heaviest sentences provided for by the Penal Code. Religious fundamentalism posed no real threat to the essential values of Turkish society, although such sporadic expressions of fanaticism were extremely disturbing. It should be noted however that most of the leaders of the fundamentalist movements active in the Muslim countries were supported by certain European countries where they even found refuge. Such was the case of the leader of the most dangerous fundamentalist group in Turkey, who organized all his movement's activities from a European country, as did the PKK terrorists. Respect for human rights and fundamental freedoms, which was advanced to justify the liberty and benevolence the terrorist groups enjoyed in certain European countries, was but a pretext behind which lurked political motives and considerations.

46. Mr. KHOURY (Observer for the Syrian Arab Republic) informed the International Federation of Human Rights, whose representative had referred to the situation in Syria, that the proclamation of the state of emergency was a measure in conformity with the Syrian Constitution that had been applied as a result of exceptional circumstances attributable to the war with Israel and Israel's occupation of part of Syrian territory. Those exceptional measures were only adopted in the case of a threat to State security, i.e. extremely rarely. As for the procedure of the Court of State Security, it was in no way different, in principle, from that of the ordinary courts and the rights of the defence were fully guaranteed. As for the Committee for the Defence of Democratic Freedoms and Human Rights in Syria, he pointed out that its title concealed an unauthorized and unlawful organization which carried out terrorist activities in Syria with the assistance of certain foreign countries nd sought to tarnish Syria's international image by means of defamatory arges against Syria. The group's members had been publicly tried in a regular hearing and given a variety of sentences; some of them had even been acquitted, a fact which demonstrated the Court's objectivity. Furthermore, contrary to what had been claimed, none of the organization's members who had been tried and imprisoned was currently on a hunger strike. The main aim of the allegations made by the Committee was manifestly to besmirch Syria's reputation abroad. Finally, the allegations by the International Commission of Jurists that Syrian lawyers were prevented from joining Arab or international organizations were totally unfounded. That organization was clearly unaware of the political situation in Syria where professional and trade union organizations were encouraged to play a constructive role in the country and abroad to advance the cause of the Arab nation, of freedom and human rights throughout the world. It would be desirable for non-governmental organizations that wished effectively to contribute to defending human rights to be more objective and always to check their information.

The meeting rose at 6.05 p.m.